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In the

Supreme Court of the United States

October Term, 1961

No. 19

UNITED STATES OF AMERICA,
Appellee,

v.

CHARLES PAUL, DIRECTOR OF AGRICULTURE OF THE STATE OF CALIFORNIA AND STANLEY MOSK, ATTORNEY GENERAL, STATE OF CALIFORNIA,
Appellants.

BRIEF OF FREDERICK T. GRAY ATTORNEY GENERAL OF THE STATE OF VIRGINIA AMICUS CURIAE

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In the

Supreme Court of the United States

October Term, 1961

No. 239

UNITED STATES OF AMERICA,

Appellee,

v.

CHARLES PAUL, DIRECTOR OF AGRICULTURE OF THE STATE OF CALIFORNIA AND STANLEY MOSK, ATTORNEY GENERAL, STATE OF CALIFORNIA,

Appellants.

BRIEF OF FREDERICK T. GRAY ATTORNEY GENERAL OF THE STATE OF VIRGINIA AMICUS CURIAE.

To the Honorable Supreme Court of the United States:

The State of Virginia, as Amicus Curiae, sponsored herein by its Attorney General, Frederick T. Gray, respectfully moves leave of this Honorable Court to the filing of a brief in the above entitled and numbered cause, and submits for filing the following Amicus Curiae brief:

INTEREST OF THE AMICUS CURIAE

The State of Virginia has a direct interest in this case inasmuch as many military installations are located on its

soil which handle milk purchased by the Department of Defense under the Armed Services Procurement Act of 1947 (62 Stat. 21).

The purchase of milk by the Department of Defense for use on these installations, at prices less than those which others in this State are required to pay under the Statutes of this State and the rules and regulations promulgated thereunder, is detrimental to the dairy farmers of this State and may lead to chaotic conditions in an otherwise stable milk economy.

ARGUMENT

The present status of this case according to latest information obtained by this Amicus Curiae, is that of application to your Honorable Court to hear oral argument and receive briefs on the merits in this case prior to rendering a decision thereon.

The appellant or movant therefore urges the court to proceed forthwith to hear oral arguments and receive briefs on the merits in this case for the following reasons:

I.

The Injunction Extends Federal Immunity from the State Regulation Beyond Existing Precedents.

The District Court in this case enjoined the defendant state officers from enforcing with respect to milk purchased by the United States:

> "either the state minimum producer price, [or] wholesale price . . . regulations promulgated by the Director of Agriculture pursuant to the California Milk Stabilization Act." (R. ——)

This sweeping injunction carries the immunity from state regulation beyond persons who contract with the United States to include the supplier of those persons. As a result, prices to the California dairy farmer have dropped below their cost of production and are causing losses of $6,000,000.00 per year. Should this decision stand, the Virginia dairy farmer may well suffer a similar loss.

II.

The Decision Conflicts with Congressional Policy

In striking down the California milk stabilization act, as applied, the District Court withdrew state protection from the dairy farmer, a class of persons whose welfare has been expressly considered by Congress. Section 204(a), of the Agricultural Act of 1954, 68 Stat. 899, declares:

> "It is the policy of Congress to assure a stabilized annual production of adequate supplies of milk and dairy products . . . and to stabilize the economy of dairy farmers at a level which will provide a fair return for their labor and investment when compared with the cost of things that farmers buy."

There is no implication that implementation of this policy was to be confined to the federal government. No conflict with state law is present since the purpose of the California statute is to afford a measure of economic security to dairy farmers in the interest of protecting the public milk supply. *In re Willing*, 12 Cal. 2d 591, 594. The same may be said of the provisions of Chapter 17, Title 3 of the Code of Virginia of 1950 (Secs. 3-346 through 3-383).

III.

Absent Conflict, the California Milk Stabilization Act Was Assimilated as Federal Law on the Military Installations in Question

Absent conflict with federal statute, the laws of the state existing at the time of the surrender of sovereignty are carried over into the law of the federal area. This assimilation of state law assures that the area involved will continue to have a developed legal system. *Stewart & Co.* v. *Sadrakula*, 309 U. S. 94, 99 (1940); *Chicago, R. I. & P. R. Co.* v. *McGlinn*, 114 U. S. 542, 546 (1885). The application of this rule to state regulatory acts was recognized in *Pacific Coast Dairy* v. *Dept.*, 318 U. S. 285, the Court saying:

> "When the federal government acquired the tract (Moffett Field), local law not inconsistent with federal policy remained in force until altered by national legislation." (318 U. S. 285, 294.)

Assimilation was found inapplicable however, because the California milk stabilization act was adopted after the transfer of sovereignty. In this case, this reverse is true. The transfers of sovereignty found by the District Court occurred subsequent to 1941, long after the 1935 enactment of the milk stabilization act. California Statutes of 1935, Chapter 241, page 922, as amended by Statutes of 1937, Chapter 3, page 42. It follows that, absent conflict, the California act remained in force in the three enclaves directly in question and that California may apply its minimum milk price regulations to the distributor with respect to the sale of milk occurring on the military bases here involved.

CONCLUSION

For the foregoing reasons, it is submitted that the questions presented by this appeal are substantial, and are important to state-federal relations, and call for resolution by this Court.

Respectfully submitted,

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M. HARRIS PARKER
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